

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 1 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KASHIBEN BECHARBHAI PATEL

Versus

PANKAJ @ SHARDABEN

Appearance:

MR AMAR BHATT for MR YN OZA for Appellant
MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 06/02/2002

ORAL JUDGEMENT

1. The appellant filed the present suit for specific performance of an agreement to sell the suit property said to have been executed by one Avantilal Manilal Bhatt who is the husband of respondent no.1. Avantilal died

soon after the agreement was alleged to have been executed. The defendant no.2 was his brother. The amount of consideration was Rs.8001/- out of which, according to the plaintiff, she had paid Rs.1,425/- as earnest money. Both the courts below have dismissed the suit. At the time of admission, the following substantial questions of law were formulated:-

- (1) Whether on the facts and in the circumstances of the case, the lower appellate court erred in law in not holding that the plaintiff was ready and willing to perform her part of contract in respect of the suit Banakhat.
- (2) Whether the lower appellate court erred in holding that unless it is specifically stated in the plaint that the plaintiff was and is ready and willing to perform her part of the contract, the suit required to be dismissed.
- (3) Looking to the facts and circumstances of the case the lower appellate court should have held that the plaintiff was ready and willing from the time of the execution of the Banakhat till the filing of the suit to perform her part of contract.
- (4) Whether the lower appellate court has erred in considering and misinterpreting Section 16 (c) of the Specific Relief Act for holding that unless it is specifically stated about readiness and willingness, suit requires to be dismissed.

2. It is contended on behalf of the appellant that the courts have erred in dismissing the suit on the ground that there was no averment in the plaint that the plaintiff was ready and willing to perform her part of the contract. In support of his contentions, the learned counsel for the appellant cited the decisions of Hon'ble Supreme Court in Syed Dastagir vs. T.R. Gopalakrishna Setty reported in AIR 1999 Supreme Court 3029 and Motilal Jain vs. Smt. Ramdasi Devi and others reported in AIR 2000 Supreme Court 2408. However, the discussion in para 23 of the judgment of the Appellate Court goes to show that even the evidence of the plaintiff failed to show that she was ready and willing to perform her part of the

contract. In the circumstances, the courts below have not committed any error of law and no substantial question of law arises from their judgments. There is no reason to interfere in Second Appeal with the decision of the courts below refusing specific performance of the contract. The appeal is, therefore, dismissed with no order as to costs.

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